United Nations CAT/C/CZE/CO/6

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the sixth periodic report of Czechia*

1. The Committee against Torture considered the sixth periodic report of Czechia (CAT/C/CZE/6) at its 1629th and 1632nd meetings (see CAT/C/SR.1629 and 1632), held on 2 and 3 May 2018, and adopted the present concluding observations at its 1649th meeting, held on 16 May 2018.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Czechia and the information contained therein.

3. The Committee appreciates having had an opportunity to engage in a constructive dialogue with the State party's delegation, and the replies provided in response to the questions and concerns raised by the Committee.

B. Positive aspects

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The Council of Europe Convention against Trafficking in Human Organs, in 2017;

(b) The United Nations Convention against Transnational Organized Crime, in 2013, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2014.

5. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including the adoption of:

(a) The amendment to the Education Act (No. 561/2004), in 2015;

(b) The Act on Victims of Crime (No. 45/2013), in 2013.

6. The Committee further welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including the adoption of:

(a) The Crime Prevention Strategy for the period 2016–2020, in 2016,

(b) The Concept of the Prison System until 2025, in 2016;

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

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(c) The Roma Integration Strategy for the period 2015–2020, in 2015;

(d) The Action Plan for the Prevention of Domestic and Gender-Based Violence for the period 2015–2018, in 2015;

(e) The Action Plan for Inclusive Education for the period 2016–2018, in 2015;

(f) The Campaign against Racism and Hate Violence, in 2014.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

7. In its previous concluding observations, the Committee requested the State party to provide further information regarding areas of particular concern identified by the Committee (see CAT/C/CZE/CO/4-5, para. 26). The Committee expresses its appreciation for the State party's follow-up response on those matters (CAT/C/CZE/CO/4-5/Add.1). In view of that information, the Committee considers that the recommendations concerning attacks against Roma, segregation of Roma children and the situation of psychiatric facilities (see CAT/C/CZE/CO/4-5, paras. 11, 14 and 21, respectively) have not yet been fully implemented.

Definition of torture

8. The Committee is concerned that the current definition of torture found in section 149 (1) of the Criminal Code does not contain all the elements, including the purposes, set out in article 1 of the Convention.

9. **Recalling its previous recommendation (see CAT/C/CZE/CO/4-5, para. 7), the Committee urges the State party to adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The Committee draws the State party's attention to paragraph 9 of its general comment No. 2 (2007) on the implementation of article 2, in which it states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity.**

Fundamental legal safeguards

10. Taking into account the procedural guarantees enshrined in domestic legislation, the Committee remains concerned that section 24 (4) of the Police Act (No. 273/2008) provides for the right of access to a lawyer only at the concerned person's own expense, and that free legal aid is not available from the very outset of deprivation of liberty. It is also concerned that, in practice, police officers do not always respect the right of detained persons to be informed of their rights and to notify a relative of their detention (arts. 2, 12–14 and 16).

11. **The State party should take effective measures to guarantee, and monitor, that all detained persons are afforded, in law and in practice, all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards, including, but not limited to, the right:**

(a) **To be informed about the charges against them and about their rights, both orally and in writing, in a language that they understand, and to certify that they have understood the information provided to them;**

(b) **To promptly contact a family member or any other person of their choice;**

(c) **To have prompt and confidential access to a qualified and independent lawyer, or to free legal aid, when needed;**

(d) **To have all periods of deprivation of liberty accurately recorded immediately after arrest in a register at the place of detention and in a central register of persons deprived of liberty, and to have detention reports drawn up accordingly to**

prevent any cases of unrecorded detention. Access to the register by lawyers and relatives of those detained should be ensured.

Medical examinations

12. The Committee expresses its particular concern that medical examinations of detained persons take place in the presence of prison guards and police officers, and that section 51 of the Health-Care Services Act prevents medical professionals from reporting suspected cases of torture and ill-treatment. It is also concerned at reports that the right of detainees to have a doctor of their own choosing for a medical examination is not respected. The Committee notes with concern that the current system of recording medical findings fails to provide meaningful information for the purpose of investigating allegations of torture and ill-treatment (arts. 2, 12–14 and 16).

13. **The Committee calls on the State party to adopt legislative, administrative and other measures necessary to ensure that:**

(a) **All detained persons have the right to request and receive a medical examination by an independent medical doctor, including a doctor of their own choosing, from the outset of the deprivation of liberty;**

(b) **Medical examinations are conducted out of hearing and out of sight of police officers and prison staff, unless the doctor concerned explicitly requests otherwise;**

(c) **The record drawn up after a medical examination contains, inter alia: (i) an account of statements made by the detained person that are relevant to the medical examination (including his or her state of health and any allegations of ill-treatment); (ii) a full account of objective medical findings based on a thorough examination; and (iii) the health-care professional's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings;**

(d) **The medical record is immediately and systematically brought to the attention of a prosecutor whenever the findings or allegations may indicate torture or ill-treatment;**

(e) **The amendment to the Health-Care Services Act (No. 372/2011) explicitly provides for the obligation of health-care professionals to report suspected cases of torture and ill-treatment to the relevant authorities and that health-care professionals are not exposed to any form of undue pressure or reprisals when fulfilling their duty.**

Strip-searches in detention centres

14. The Committee is concerned at reports that police and prison staff routinely and indiscriminately conduct strip-searches of persons held in police custody and in prison by asking them to fully undress and squat, in some cases in front of others. It is further concerned at the lack of a written policy or guideline concerning body searches (arts. 2, 12–14 and 16).

15. **The State party should put an end to the practice of routinely and indiscriminately strip-searching detained persons and ensure that body searches, if necessary, are carried out in a manner respectful of the dignity of detainees and by officers of the same sex as the detainee in question. The State party should develop and implement written guidelines that set out the circumstances of, and procedures for, conducting a body search, provide police officers and prison staff with relevant training, and regularly monitor compliance with the guidelines.**

Complaints of torture and ill-treatment

16. While noting that the General Inspection of Security Forces no longer reports to the Ministry of the Interior, the Committee is concerned about claims that it continues to be largely composed of former members of the Police Inspectorate, a body which operated under the authority of the Ministry of the Interior, and thus the General Inspection's

independence may not be guaranteed in practice. Considering the low number of complaints alleging torture and ill-treatment, the Committee regrets the absence of disaggregated data on complaints lodged and detailed information on corresponding investigations and the results thereof (arts. 12–13).

17. **The Committee urges the State party to adopt the measures necessary to:**

(a) **Strengthen the investigative capacity and the independence of the General Inspection of Security Forces, with a view to ensuring that all complaints of torture and ill-treatment, including any such allegations made by persons deprived of their liberty, are immediately referred to it, that all allegations of torture or ill-treatment are promptly, impartially and effectively investigated, and that suspected perpetrators are duly tried and, if found guilty, are punished in a manner that is commensurate with the gravity of their acts;**

(b) **Ensure that public officials under criminal or disciplinary investigation for allegedly having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, subject to the observance of the principle of presumption of innocence;**

(c) **Protect complainants and victims against ill-treatment or intimidation that may arise as a consequence of their complaint, duly inform them of the progress and results of their complaint, and enable them to exercise their right to judicial remedy and participation in proceedings whenever they disagree with the prosecution's inaction;**

(d) **Compile, and provide the Committee with, disaggregated statistical data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment.**

Conditions of detention

18. While noting the construction of new quarters in prisons and the introduction of alternative non-custodial measures, the Committee is concerned at the continued prison overcrowding, particularly in high-security facilities, where living conditions have reportedly deteriorated, and at the insufficient implementation of alternative measures. It is also concerned about reports that detainees have inadequate access to health-care services, including a lack of psychological care, and the absence of interpretation services during medical examinations. The Committee notes with concern that inmates found to have suicidal intent do not automatically receive medical assistance, in particular psychiatric care. Recalling its previous recommendations (see CAT/C/CZE/CO/4-5, para. 10), it remains concerned that the State party maintains a policy of obliging all detainees to pay part of the costs of their incarceration (arts. 11 and 16).

19. **The Committee calls on the State party to:**

(a) **Conduct a fundamental review of its penal system, in particular with regard to the high incarceration and recidivism rates;**

(b) **Enhance efforts to reduce prison overcrowding, including by implementing non-custodial measures as alternatives to detention, in line with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(c) **Bring the living conditions in all detention facilities into line with international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(d) **Put an end to the policy of obliging all detainees to pay part of the costs of their incarceration;**

(e) **Ensure that all incidents of death, suicide, attempted suicide and violence in custody are reported to central authorities for monitoring purposes and that all**

cases are investigated and, on a finding of criminal responsibility, lead to a penalty proportionate to the gravity of the offence. The State party should also ensure detection, monitoring and protection of vulnerable detainees with a risk of suicide, and provide them with appropriate assistance, including psychiatric care and other preventive measures;

(f) Ensure adequate access to health services, free of charge, and to interpretation services during medical examinations or consultations, if needed;

(g) Consider allowing non-governmental organizations (NGOs) to regularly monitor all places of detention to complement the monitoring undertaken by the national preventive mechanism.

Situation of asylum seekers and other foreign nationals

20. The Committee is concerned at the State party's practice of detaining individuals seeking international protection, including those in particularly vulnerable situations, and at the lack of alternative accommodation for families. Taking into account the fact that the Asylum Act prohibits the detention of asylum-seeking children, the Committee is particularly concerned that families with children continue to be detained at the Bělá-Jezová facility, often for periods of more than two months. The Committee regrets that persons detained at immigration detention centres lack adequate access to free legal assistance, resulting in low levels of awareness of their rights to apply for asylum, or to appeal against a negative decision. It is also concerned at reports of the absence of a standard operating procedure to identify and protect persons in vulnerable situations, the use of excessive force, such as indiscriminate handcuffing when expelling foreign nationals, and the obligation of foreign nationals awaiting deportation to pay for their detention (arts. 3, 11 and 16).

21. **The State party should take all the measures necessary to:**

(a) End the practice of detaining persons in need of international protection, particularly children, and ensure the provision of alternative accommodation for families with children;

(b) Continue its efforts to improve material conditions in reception centres and detention facilities, including with regard to provision of basic necessities, health-care services and educational and recreational opportunities for children;

(c) Provide free legal assistance at all reception and detention centres, and facilitate access to those places by NGOs providing legal assistance;

(d) Develop and implement a standard procedure for the identification and protection of persons in vulnerable situations, including victims of torture and ill-treatment;

(e) Review the policy of obliging detained foreigners awaiting deportation to pay for their detention, with a view to abolishing it.

Stateless persons

22. The Committee is concerned at the absence of a legal definition of statelessness in the domestic legislation, and the lack of a separate mechanism to identify and protect stateless persons, who need specific procedural safeguards (art. 3).

23. **The State party should introduce a definition of statelessness into its domestic legislation. It should also establish a dedicated statelessness determination procedure, provide stateless persons with identification documents, and create a central database of stateless persons in its territory.**

Inclusion of Roma children

24. While noting the measures taken by the State party to implement the decision of the European Court of Human Rights in *D.H. and others v. the Czech Republic*, and the increase in the number of Roma children in mainstream education, the Committee is

concerned that Roma children remain overrepresented in specialized educational programmes for children with mild mental disabilities (arts. 2, 10, 12–13 and 16).

25. **Recalling its previous recommendation (see CAT/C/CZE/CO/4-5, para. 14), the Committee calls on the State party to strengthen its efforts to eradicate the segregation of Roma children in its educational system, and ensure that the decision to place Roma children in educational programmes is not adversely influenced by their Roma identity.**

Hate crimes against minority groups, including Roma and Muslims

26. While noting the launching of the Campaign against Racism and Hate Violence and the training of police officers on investigating hate crimes, the Committee remains concerned at the continued occurrence of hate crimes against minorities, including the Roma and Muslim communities, and at the xenophobic statements endorsed by some politicians, including members of parliament (arts. 2, 12–14 and 16).

27. **The Committee urges the State party to publicly condemn threats and attacks against minority groups, including the Roma and Muslim communities, and to refrain from endorsing, through action or omission, such attacks by ensuring:**

(a) **Prompt, thorough and effective investigations of all threats and attacks targeting these groups, including any alleged discriminatory motives that may provoke these actions, and guaranteeing that those responsible are tried and punished in accordance with the gravity of their acts;**

(b) **Effective training of law enforcement officials and the judiciary on hate-motivated crimes and the systematic monitoring of such crimes;**

(c) **Awareness-raising measures to counter prejudice and stereotypes, and policies to combat and prevent racially motivated crimes and discrimination.**

Involuntary sterilization

28. The Committee is concerned that the State party has failed to establish an extrajudicial mechanism to provide effective reparation to all persons who were subjected to involuntary sterilization, particularly Roma women. It regrets that the only means for victims of involuntary sterilization to obtain such reparation is through a legal action that is subject to a three-year statute of limitations, and that many such cases have already been time-barred (arts. 2, 14 and 16).

29. **Recalling its previous recommendation (see CAT/C/CZE/CO/4-5, para. 13), the Committee calls on the State party to promptly, impartially and effectively investigate all allegations of involuntary sterilization of Roma women, and prosecute and, if found responsible, punish perpetrators. The State party should establish an extrajudicial compensation mechanism through which victims of involuntary sterilization have access to fair and adequate redress, and consider extending the time limit for filing compensation claims.**

Redress

30. The Committee regrets the absence of disaggregated statistical data concerning compensation provided to victims of torture and ill-treatment, including victims of involuntary sterilization, surgical castration, ill-treatment in psychiatric settings, attacks against minorities, trafficking and domestic and sexual violence. It is also concerned about the time limit set for filing complaints under the State Liability Act (No. 82/1998) (art. 14).

31. **The State party should provide the Committee with data on the total number of requests for compensation received, the number of requests granted and the amount of the compensation awarded by courts. It should consider extending the time limit for filing claims under the State Liability Act, in order to allow victims to obtain fair and adequate compensation. The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14, in which it elaborates on the nature and scope of the State parties' obligations under article 14 of**

the Convention to provide full redress and the means for full rehabilitation to victims of torture.

Treatment of persons in psychiatric institutions

32. While noting the reform of psychiatric care under way, and the recently issued methodological guidelines on the use of restraints, the Committee remains concerned at the continued use of net beds in psychiatric institutions. The Committee is concerned at reports that recommendations made by the Public Defender of Rights have not been fully implemented. It is also concerned at reports that the scope of the information contained in the central registry recording the use of restraints is limited for the purpose of monitoring (arts. 11 and 16).

33. **The State party should:**

(a) **Strengthen its efforts to implement the ongoing reform of psychiatric care, including by increasing the use of less restrictive alternatives to the forcible confinement of persons with mental and psychosocial disabilities;**

(b) **Ensure that national legislation provides guarantees for effective legal safeguards for all persons with mental and psychosocial disabilities concerning involuntary psychiatric and medical treatment in psychiatric institutions, including with regard to chemical and physical restraints;**

(c) **Prohibit, in practice, the use of cage beds in all psychiatric institutions and social institutions in which children with mental disabilities are held; amend the Health-Care Services Act (No. 372/2011) to include the prohibition of net beds in all psychiatric facilities; and ensure that the central registry recording the use of restraints includes sufficiently comprehensive information for the purpose of monitoring;**

(d) **Take the necessary measures to enable the Public Defender of Rights, in its capacity as the national preventive mechanism, to continue its regular and unannounced visits to psychiatric institutions without any restriction, and to ensure that recommendations made by the Public Defender of Rights are effectively implemented;**

(e) **Investigate all complaints of ill-treatment of persons with mental and psychosocial disabilities in psychiatric institutions, bring those responsible to justice and provide redress to victims.**

Surgical castration of sex offenders

34. While noting that surgical castration may only be carried out on a voluntary basis and that procedural safeguards have been introduced into the legal framework, the Committee regrets that the State party has not completely abolished the practice of surgical castration (arts. 2 and 16).

35. **The Committee recommends that the State party take the necessary measures to review the policy of using surgical castration in the context of treatment of sex offenders, with a view to bringing it into line with international standards.**

Public Defender of Rights

36. While noting the State party's report indicating that the process of amending the Act on the Public Defender of Rights of 2015 is under way (see CAT/C/CZE/6, para. 39), the Committee is concerned that the State party has not established a consolidated national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and that, despite the recent expansion of its capacity, the Public Defender of Rights still lacks the broad mandate needed to promote and protect all areas of human rights (art. 2).

37. **The State party should expedite its efforts to amend the Act on the Public Defender of Rights, with a view to strengthening and bringing the human rights mandate of the Public Defender of Rights into full compliance with the Paris**

Principles. It should also ensure that the Public Defender of Rights has sufficient financial and human resources to carry out its mandate in an effective and independent manner.

Training

38. While noting training courses provided to public officials in the areas covered by the Convention, the Committee remains particularly concerned that specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not provided to medical professionals dealing with persons deprived of liberty. It regrets the absence of information on the impact of the training conducted for all relevant officials, including law enforcement officials, prison staff and border guards (art. 10).

39. **The State party should provide mandatory training on the provisions of the Convention and the absolute prohibition of torture for public officials charged with the various functions enumerated in article 10 of the Convention, and introduce training programmes on non-coercive investigation techniques. The State party should also ensure that the Istanbul Protocol is made an essential part of training for all medical professionals and other public officials involved in work with persons deprived of their liberty. The State party should also develop and implement specific methodologies to assess the effectiveness and impact of the training on preventing torture and ill-treatment.**

Follow-up procedure

40. **The Committee requests the State party to provide, by 18 May 2019, information on follow-up to the Committee's recommendations on strip searches in detention centres, hate crimes against minority groups, including Roma and Muslims, and treatment of persons in psychiatric institutions (see paras. 15, 27 and 33 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

41. **The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.**

42. **The State party is invited to submit its seventh periodic report by 18 May 2022. For that purpose, and considering that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting.**